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Paper No. 9

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JAN 11 2005

In re Application of:  
Toshiki Tajima  
Serial No.: 09/757,150  
Filed: January 08, 2001  
Attorney Docket No.: **IL-10626**

DECISION ON PETITION  
TO WITHDRAW HOLDING  
OF ABANDONMENT

This is a decision on the petition filed April 28, 2004, under 37 C.F.R. § 1.181, to withdraw the holding of abandonment in the above-identified application. No fee is required.

The petition is **GRANTED**.

A non-final Office action was mailed on July 17, 2003. A Notice of Abandonment was mailed on April 05, 2004.

Practitioner asserts that the Office action mailed on July 17, 2003, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received. A copy of the file docket where the Office action would have been entered was also included with the petition. Practitioner also asserts that upon contacting the examiner of the instant application, a copy of the Office action was faxed to the practitioner on April 07, 2004.

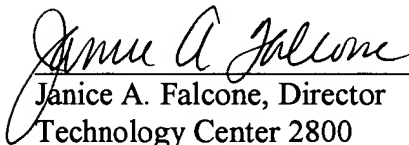
A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner, and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition and supporting evidence is sufficient to establish a showing of non-receipt of the Office action mailed July 17, 2003.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The response to the Office action filed with the petition is accepted as timely and will be entered into the file. The file will be forwarded to the examiner for further examination.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



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Janice A. Falcone, Director

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